

TEACHERS' RETIREMENT BOARD  
BENEFITS AND SERVICES COMMITTEE

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SUBJECT: Hempstead – Consideration of  
Proposed Decision

ITEM NUMBER: 5

ATTACHMENT(S): 1

ACTION:   X  

DATE OF MEETING: July 13, 2000

INFORMATION:       

PRESENTER (S): Ron Mealor

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**BACKGROUND:**

Attached is the Proposed Decision rendered by Administrative Law Judge (ALJ) in the Hempstead matter. It accurately sets forth the relevant facts that were known at the time of the hearing, namely:

1. Janet D. Hempstead was a Plan B member of the CalSTRS. She was diagnosed with terminal malignant meningioma on February 25, 1999 and passed away on May 9, 1999.
2. According to documents submitted by the employer Ms. Hempstead's "Employment Termination Date" and her "Last Day of Compensation" was October 2, 1998, the day she last taught.
3. Under the Education Code governing CalSTRS a death benefit of \$21,974 is paid to the designated beneficiary of a member upon the members' death that occurred during one of the following periods:
  - (1) While in employment for which compensation is paid.
  - (2) Within four months after termination of service or termination of employment, whichever occurs first.
  - (3) Within 12 months of the last day for which compensation was paid, if the member was on an approved leave of absence without compensation for reasons other than disability or military service.
4. Ms. Hempstead designated her son, Dr. Kenneth Hempstead as the death benefit beneficiary.
5. Upon Ms. Hempstead's death, Dr. Hempstead requested payment of the death benefit.
6. Said request was denied for the reason that Ms. Hempstead's death did not occur while she was in employment for which compensation was paid or within four months after her termination date of October 2, 1998 or while she was on an approved leave of absence.
7. Dr. Hempstead objected to this determination for the reasons that he was advised by CalSTRS staff that his mother was "active" and still "actively employed" in as

much as she had not “terminated” her employment and was assured of her continuing qualification for the death benefit. Dr. Hempstead testified that he and his mother had relied upon this determination by staff.

Based upon these facts and the applicable law at the time of the hearing, the ALJ found that Ms. Hempstead, not being on a leave of absence, did not qualify for the death benefit because she did not die while “in employment for which creditable service was paid” “or within four months after termination of creditable service or termination of employment.”

Additionally, the ALJ analyzed the case under equitable estoppel and found that the second element of “inducement founded on turpitude [was] clearly lacking” and that “negligent conduct [would] not rise to support a determination of equitable estoppel.

#### **ALTERNATIVES:**

The Committee has the following options as to the Proposed Decision:

1. Adopt the Proposed Decision as it reads with a few minor non-substantive changes.
2. Reject the Proposed Decision in its entirety and either refer the matter back to the ALJ to take additional evidence and render a new Proposed Decision based on the record of the prior hearing and the new evidence or hear the matter itself based upon the transcript with or without taking additional evidence.

#### **RECOMMENDATION:**

Staff recommends that the Committee reject the Proposed Decision and refer the matter back to the ALJ to take additional evidence on Ms. Hempstead’s employment status prior to her death that has come to light after the hearing. This evidence could affect the ALJ’s and/or the Committee’s determination regarding whether Ms. Hempstead’s employment “terminated” for purposes of the Education Code effective with her last day of actual work. Staff further recommends that the ALJ be directed to analyze the facts using the more modern requirements of proof as to intent of the party to be estopped set forth in Campbell v. Scripps Bank, 78 Cal. App. 4<sup>th</sup> 1328 (March 14, 2000). It is the opinion of the staff after analysis of case law that the doctrine of estoppel does not require a showing of some actual “turpitude” on the part of the party against whom estoppel is asserted, as the ALJ suggests in the Proposed Decision, but rather that negligence that is careless and culpable conduct is, as a matter of law, equivalent to an intent to deceive and will satisfy the element of fraud necessary to an estoppel..

Although the new evidence may not change the outcome, staff feels it is important for the Committee to be fully informed before it makes its decision. Additionally, we feel an analysis of the element of intent using more current principles would permit the staff and Committee to make a more informed decision in this case and others.